IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Smt.Leela Devi & ors. Vs. Union of India & anr.

S.B.CIVIL MISC. APPEAL NO.288/1993

Against the award dated 26.04.1993 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.100/1990.

Date of Judgment : 19.09.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.M.Bhandari for the appellants
Mr.Farjand Ali for Mr.Vineet Kumar Mathur for the respondents

Reportable **BY THE COURT:**

This is claimants' appeal seeking enhancement over the amount of compensation awarded by the Motor Accidents Claims Tribunal, Jodhpur in its award dated 26.04.1993 made in Claim Case No.100/1990 in the sum of Rs.92,905/- inclusive of interest on account of accidental death of Satyanarain, 30 years in age, husband of appellant No.1, son of appellant No.2 and father of appellant Nos.3 to 5. Only the question of quantum of compensation being involved in this appeal, a brief reference to the background facts would suffice.

The accident in question occurred on 01.01.1990 at about 5.00 p.m. near Dangiyawas Petrol Pump on Jodhpur to Bilara Road when the victim Satyanarain standing on the kuchcha road was hit by an Ambassador Car bearing number 82B – 22902 (1530) belonging to non-applicant No.1 Union of India and driven by non-applicant No.2 Mangu Ram. Satyanarain sustained several injuries and was admitted in Mahatma Gandhi Hospital, Jodhpur where he breathed his last on 13.01.1990 while undergoing treatment.

Stating the age of the deceased at 30 years and his earning at Rs.1,500/- per month while working as turner on lathe machine and as welder, his dependents claimed compensation in the sum of Rs.6,60,000/- for the loss suffered by them including treatment expenditure during hospitalisation of the deceased from 01.01.1990 to 13.01.1990. The claim application was contested by the non-applicants denying rash and negligent driving of the car. On the pleadings of the parties, the following issues were framed by the Tribunal:

> "(1)क्या क्लेम के पद् संख्या-10 में वर्णितानुसार अम्बेसेडर कार 82-बी-22902 (1530) को अप्रार्थी सं0 2 श्री मांगूराम ने तेज रफ्तार व लापरवाही से चलाई व

बिलाड़ा रोड़ पर खड़े सत्यनारायण के रोंग साईड में जाकर टक्कर मारी जिससे आई चोटों के कारण सत्यनारायण की मृत्यु दिनांक 13.1.90 को हो गई । यह दुर्घटना दिनांक 1.1.90 की शाम 5 बजे हुई ?

(2) क्या क्लेम के पद संख्या-11 में वर्णितानुसार प्रार्थीगण बतौर हर्जाना रूपये 6,60,000/- अप्रार्थीगण सं0 1 व 2 जो इस कार के स्वामी हैं व अप्रार्थी सं0 3 जो चालक था, से प्राप्त करने के अधिकारी हैं?

(3) अनुतोष ?"

It may be pointed out that in issue No.2 supra, car driver has wrongly been referred as non-applicant No.3; he was arrayed as non-applicant No.2. Be that as it may, in oral evidence, the claimants examined Leela Devi, claimant No.1 and wife of the deceased as PW-1, Hari Kishan, eye-witness to the accident as PW-2 and Mohanlal, brother-in-law of the deceased as PW-3. The non-applicants examined the car driver, Mangu Ram as DW-1. The claimants also produced relevant documentary evidence including police investigation papers; bills of treatment expenditure and certain documents in relation to the employer firm of the deceased, M/s Vijay Engineering and Trolley Works.

The learned Judge of the Tribunal after considering the evidence available on record found in issue No.1 that the accident was caused by negligence and omission of caution by the car driver; that Satayanarain sustained injuries

including head injury in the accident; and that he died because of such head injury.

Taking up quantification of compensation in issue No.2 the learned Judge observed that the wife of the deceased, PW-1 Leela Devi stated her husband earning Rs.1,000/- per month at the time of their marriage whereas the witness PW-3 Sohanlal stated that the deceased was getting salary at about Rs.600-700/- at the time of his marriage; that the deceased was working in the said M/s. Vijay Engineering Works that had closed down; that the name of Satyanarain was stated in the particulars of the employees of said concern, Ex.23; and that Satyanarain remained hospitalised for 12 days and bills of his treatment expenditure in the sum of Rs.905/- were filed. After this much of the consideration, the learned Judge observed that claimants were entitled for Rs.905/- towards treatment expenditure; that there was contradiction in the statements of Leela Devi and Sohanlal about the salary of the deceased at the time of his marriage; and thereafter concluded that the claimants were entitled for compensation in the sum of Rs.70,000/-. The learned Judge further allowed Rs.15,000/- towards non-pecuniary loss and Rs.4,000/- towards funeral expenses and in this manner arrived at a figure of Rs.89,905/- to be awarded as

compensation. The learned Judge further observed that disposal of the case was delayed because the claimants' side took long time in adducing evidence and, therefore, allowed a lump sum of Rs.3,000/- towards interest. In this manner the Tribunal made the award in the sum of Rs.92,905/- in favour of the claimants.

The award so made by the Tribunal has been assailed by the claimants in this appeal. Learned counsel Mr.J.M.Bhandari appearing for the appellants has contended that the award on its quantification of compensation remains too low and grossly inadequate where the learned Tribunal has not considered awarding of reasonable compensation towards pecuniary loss on the basis of the income of the deceased who was a skilled workman and has further erred in denying reasonable rate of interest on entirely irrelevant considerations and unjustified grounds. Per contra, learned counsel Mr.Farjand Ali has supported the impugned award with the submissions that the Tribunal has awarded reasonable compensation and the amount so awarded by the Tribunal with reference to the period of accident and the claim application i.e. of the year 1990 cannot be said to be grossly inadequate; that the Tribunal has allowed entire amount towards bills of treatment expenditure and has further awarded

higher amount towards funeral expenses and, on the whole, the award remains that of just compensation.

Having given thoughtful consideration to the submissions made by the learned counsel for the parties and having perused the entire record, this Court is clearly of opinion that the impugned award on its quantification of compensation remains grossly inadequate and too low and cannot be approved.

Having examined the considerations adopted by the learned Judge of the Tribunal, this Court is constrained to observe that the approach of the learned Judge while dealing with a vehicular accident claim case in assessing the pecuniary loss at a lump sum of Rs.70,000/- in relation to a skilled workman of 30 years of age and having five dependents cannot be countenanced. This Court is clearly of opinion that compensation to be awarded by the Tribunal is required to be quantified on some rationale and some principle; and ordinarily, the short-cut of awarding compensation in lump sum ought not be adopted. In the present case, such a cursory approach has resulted in making the award abnormally on the lower side causing gross injustice to the claimants.

It is true that the Tribunal has awarded an amount of Rs.905/- towards treatment expenditure on the basis of bills produced but even such amount appears inadequate. The deceased had suffered head injury and remained hospitalised for 12 days. The claimants have of course produced whatever bills were available with them but in the overall circumstances of the case, extra expenditure by the distressed family cannot be ruled out and a reasonable component ought to have been provided therefor. Having regard to the circumstances of the case, this Court is of opinion that an amount of Rs.1,500/- minimum ought to be allowed to the claimants towards treatment and co-related expenditure incurred during 12 days the victim battled for life before giving in.

So far loss of dependency is concerned, the so-called discrepancy referred by the learned Judge of the Tribunal in the statements of PW-1 Leela Devi and PW-3 Sohanlal is not of material contradiction and is required to be looked at from practical point of view. According to Smt.Leela Devi she knew that after four-six months of her marriage, her husband was getting Rs.1,000/-; whereas Sohanlal, brother-in-law of the deceased, has stated that at the time of marriage, the deceased was getting about Rs.600-700/- per month. Apparently both these witnesses are referring to different time

period regarding earnings of the deceased and then, the statement of Sohanlal is only that of approximation. Further, in such source of earning of the deceased as a skilled workman there is no reason not to give due credence to the statement of his wife. Yet further, even if deceased was earning Rs.600-700/- per month before marriage, his putting extra efforts to earn more after marriage cannot be ruled out. Moreover, both the said witnesses are ad idem that the deceased was getting salary of Rs.1,500/- at the time of accident. PW-3 Sohanlal has also pointed out that the deceased was getting annual increment in the range of about Rs.50-100/-. He has also deposed that the owner of the employer concern of deceased, M/s Vijay Engineering and Trolley Works, had expired about two years before the date of his statement and the said establishment has closed down. The claimants have still produced whatever relevant evidence they could gather; and the documents Ex.23 to Ex.26 show that Satyanarain was employed with Babulal, the proprietor of M/s.Vijay Engineering and Trolley Works. There is no contrary evidence on record and there appears no reason to disbelieve the assertions made by the claimants.

A Motor Accidents Claims Tribunal particularly when dealing with a fatal accident case and making assessment of

pecuniary loss ought to consider that unless deceased was in such a position like the one in settled job or employment or a tax payer, where some reasonable proof regarding his last income is likely to be available, in other cases, the income of the deceased is required to be estimated with reference to the overall fact situation brought on record by the claimants and the surrounding circumstances. Appreciation of evidence in such cases is also required to be undertaken from realistic rather than hyper technical view point.

The deceased was 30 years in age and had five dependents. When no other source of income of the dependents has been shown, a reasonable estimate ought to have been put by the learned Judge of the Tribunal to consider the earning of the deceased and dependency of the claimants.

Even if the case is viewed from a conservative stand point, the income of the deceased in the year 1990 minimum at Rs.1,200/- per month cannot be denied particularly in view of the fact that he has been shown to be a skilled workman. The deceased had five dependents, wife, mother and three children and yet, even if one-third is deducted towards his personal expenditure, a minimum of Rs.800/- per month is available to the claimants. Even if nothing is added towards

future prospects and likelihood of growth in income, in any case, the multiplicand in the sum of Rs.9,600/- per annum minimum is available to be considered for the claimants.

The deceased was 30 years in age and in the overall circumstances of the case, it appears appropriate to apply a multiplier of 17 for assessment of pecuniary loss. Hence, for the claimants pecuniary loss stands minimum at Rs.1,63,200/- (9600/- x 17). It is apparent on the face of record that the lump sum of Rs.70,000/- as adopted by the Tribunal towards pecuniary loss remains entirely unjustified and falls too short of adequacy.

Further, in view of the age of the deceased and the claimants, it appears appropriate to allow non-pecuniary loss at a sum of Rs.20,000/- towards loss of consortium and loss of services and guidance of the deceased. The Tribunal has allowed a sum of Rs.4,000/-towards funeral expenses. However, in the circumstances of the case, this Court is of opinion that funeral expenses deserve to be reduced to Rs.2,000/-.

The claimants are entitled for compensation in the sum of Rs.1,86,700/- (1,500/- + 1,63,200/-+ 20,000/- + 2,000) as

against the amount of Rs.89,905/- assessed by the Tribunal and are, therefore, entitled for further compensation in the sum of Rs.96,795/-.

Another part of the approach of the learned Judge of the Tribunal in restricting interest only at Rs.3,000/- lump sum is difficult to be appreciated. The claimants have been deprived of reasonable rate of interest from the date of filing of claim application with the observation that there had been some delay on the part of the claimants in leading evidence. The observations are neither correct on facts nor justified in law.

The record of the Tribunal shows that in this claim application filed on 12.04.1990, the non-applicants were served in the first attempt; and appearance was put by them on 27.07.1990; but reply was filed after few opportunities on 06.05.1991; and issues were framed on 02.07.1991. First date for evidence was fixed on 16.09.1991 but on that date the matter was adjourned for the learned Judge of the Tribunal being not available; and was again adjourned on 11.11.1991 because of court reference. The claimant Leela Devi of course attended on both the dates and her signatures are available on the margin of order-sheet. On the next date

i.e. 14.01.1992 she was examined and on the next date of 03.03.1992, PW-2 Hari Kishan was examined. The matter was fixed on 14.04.1992 but was adjourned on 16.04.1992 because of 14th and 15th of that month having been declared holidays. An adjournment was taken on 28.07.1992 for claimants' evidence. Of course, again no witness was present on the next date of 01.09.1992 but the fact remains that learned Judge of the Tribunal was also not available on that date. On 20.10.1992 also, no witness was available but adjournment was sought because of indisposition of counsel for the claimants and thereafter on the next date i.e. 11.01.1993, PW-3 Sohanlal was examined and the claimants closed down their evidence.

Therefore, out of nine dates fixed for evidence of the claimants after framing of issues, on five dates the matter was adjourned for the reasons that: on two dates, the learned Presiding Officer was not available; on one occasion, there was a court reference; on another occasion, counsel for the claimants was indisposed; and one date was declared a holiday and the matter was taken up two days thereafter. On other three dates, the claimants did examine their witnesses. Of course one adjournment was taken on 28.07.1992. In this state of affairs and the position of record, it is difficult to

countenance the approach of the learned Judge of the Tribunal in making the observation that delay was caused by the claimants and on that basis denying the claimants reasonable pendente lite interest on the award amount.

This Court is clearly of opinion that in a motor accident claim case, the claimants ought not be deprived of reasonable rate of interest on the award amount from the date of filing of claim application as required by Section 171 of the Motor Vehicles Act. It could only be in such cases where the claimants could be held guilty of intentional and inexplicable delay that some part of interest could be considered for denial but not ordinarily. Having regard to the circumstances of this case, this Court is of opinion that instead of awarding a lump sum of Rs.3,000/- towards interest, the claimants ought to have been allowed interest at a reasonable rate from the date of filing of claim application.

The accident in question occurred on 01.01.1990, the claim application was filed on 12.04.1990 and the award was made by the Tribunal on 26.04.1993. In the overall circumstances of the case and in view of substantial enhancement being made herein, it is considered appropriate that the claimants be allowed interest on the award amount at

the rate of 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The claimants are awarded compensation in the sum of Rs.1,86,700/- as against the amount of Rs.89,905/- allowed by the Tribunal. The claimants shall, therefore, be allowed further compensation in the sum of Rs.96,795/-. The claimants shall be entitled for interest on the award amount of Rs.1,86,700/- at the rate of 7.5% per annum from the date of filing of claim application.

The amount remaining to be paid under the modified award shall be deposited by the respondent-Union of India within 30 days from today and upon deposit the same shall be disbursed to the claimants in the manner and proportion as contemplated by the impugned award. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI),J.

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